

LEGITIMIZATION OF JERUSALEM EMBASSY ACT ACCORDING TO INTERNATIONAL LAW

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Abstract

Jerusalem is a special entity under the administrative power of United Nations according to United Nations General Assembly Resolution 181, where Jerusalem does not fall under the sovereignty of any state. Jerusalem Embassy Act is the public law of United States which recognized Jerusalem as the capital city of Israel by establishing a diplomatic mission in the city. This paper concludes that Jerusalem Embassy Act is illegitimate according to international law. It turns its back to international obligation under the Vienna Convention on Diplomatic Relations 1961 and UN resolutions. Thus, the Jerusalem Embassy Act has to be pulled back by the US parliament in order to maintain international peace and security, bearing in mind the ongoing dispute between Palestine and Israel.

Keywords: *Jerusalem; Jerusalem Embassy Act; International Diplomatic Law; Corpus Separatum*

1. Introduction

The territory of Palestine, particularly the City of Jerusalem, is the center of conflict between the Jews and Arabs since the end of World War I. It was once the territorial sovereignty of Ottoman Empire before their fall in the aftermath of World War I.¹ The Zionist movement, an organization based in Europe, is a mass organization which held the belief of the establishment of an independent Jewish state (*Der Judenstaat*) ‘in the promised land’, which is Palestine.² British Empire, whom held the Mandate over Palestinian territory since Ottoman’s disbandment, was requested by the Zionist organization to allow Jews migration from Europe to Palestine.

The permission was granted through the Balfour Declaration, where British allowed European Jews migrants to settle in the Palestinian territory under the Mandate. This caused civil conflicts between the European Jews and local Arab-Palestinians, who perceived the British Mandate and the Zionist movement as a threat to their right of self-determination.

The civil conflicts spread wide and escalated into a series of violence targeted towards the Jews people. Unable to resolve the conflict, British handed over the Mandate over Palestine to the United Nations, and to request a settlement of dispute between the Arabs and the Jews people in Palestine. UN established the UN Special Committee on Palestine (UNSCOP), which main

¹ Henry Cattan, “The Status of Jerusalem Under International Law and United Nations Resolutions,” *Journal of Palestine Studies* 10, no. 3 (1981): 3.

² Michael J. Cohen, *The Origins and Evolution of the Arab-Zionist Conflict* (Berkeley: University of California Press, 1987).

goal is to propose a recommendation for the dispute settlement between the two groups. The recommendation from UNSCOP was adopted into UN General Assembly Resolution No. 181 titled *The Future of Palestine*, where the Assembly recommended the partition of Palestine territory into two states; the state for Jews and the state for Arab.³ Meanwhile, the Holy City of Jerusalem became a separate entity or *corpus separatum*, an international regime where the city does not fall under any sovereignty and instead was overseen by an administrative power of United Nations Trusteeship Council.⁴

The legal binding force of resolution 181 remains debatable as source of law. The definition of sources of international law, as with the definition of law itself, may vary according to its meanings and functions. Material source of international law may define the source of law as the legal basis, and formal source of international law answer the questions about the relevant legal provisions considered as the legal norm of international law.⁵ Another stated that formal sources confer upon the rules an obligatory character, while material sources comprise the actual content of the rules. Formal sources of international law are contained in the provision of Article 38 of ICJ Statute, where it stated that the formal sources are: international conventions or treaty, international custom, general principles of law recognized by civilized nations, and judicial decisions and teachings of highly esteemed experts as a subsidiary source.

International convention is a treaty conducted between the subjects of international law leading to several legal consequences binding to the subjects.⁶ As a formal source of international law, a treaty can be categorized into two, that is a treaty contract and law-making treaties. Treaty contract is a contractual treaty, with legal consequences only for those who conduct the treaty itself, such as the cases for most bilateral treaties concerning trading and diplomatic missions. Law-making treaties are the treaties which put down the general provisions and norms for international public, and it has a wider scope, for example the treaty concerning the sea (International Convention on the Law of the Seas 1958) and the constitution of an international organization (United Nations Charter). Law-making treaties may bind not only to the states ratifying it, but also to other states who do not.

³ Asher Susser, "The Historical Linkage: Israel's Legitimacy and the Idea of Partition," *Israel Studies* 23, no. 3 (2018): 219.

⁴ Jad Isaac and Suhali Khalilieh, "The Jerusalem Saga: Current Realities in Jerusalem," *Palestine-Israel Journal of Politics, Economics, and Culture* 17, no. 1 (2011): 109.

⁵ Mochtar Kusumaatmadja and Ety R. Agoes, *Pengantar Hukum Internasional* (Bandung: Alumni, 2003).

⁶ Kusumaatmadja and Agoes.

International custom is a general custom adopted as a legal norm. Legal theorists define custom as a practice that emerges outside of legal constraints, and which subjects of international law spontaneously follow in the course of their interaction out of a sense of legal obligation.⁷ International custom can also be originated from states behavior, as can be seen from state policies, and in which said behavior is consistently followed by other states without any opposition, and thus a customary norm is born.⁸ In order for a custom to be perceived as a legal norm, there are two requirements needed to be fulfilled. First, the custom must be practiced in repetitive and continuously in a long span of time,⁹ and there must be a consensus for international public that the custom possesses a legal characteristic, rendering it obligatory.¹⁰

Apart from all the theoretical debates, the resolutions did not settle the dispute over Palestinian's territory and particularly Jerusalem, and the city has been an object of various sovereignty claims since Arab-Israeli War in 1948 until today. One particular claim was Israel's, where Israel finally occupied the City of Jerusalem during Six Days War in 1967 and claimed a unified Jerusalem as their capital city.¹¹ This claim is enforced by the legitimation of Jerusalem Embassy Act by the US in recent year of 2017. In the Act, US asserted Jerusalem as the capital city of Israel, and for the establishment of US diplomatic mission to be held in Jerusalem city as soon as possible. So, another theory that we utilize in this research is concerning international diplomatic law.

According to Ian Brownlie, diplomacy is several means conducted by states to form a mutual agreement of cooperation, to communicate with each other, or to conduct political or legal relations through officials with special permits.¹² Ernest Satow defined diplomacy as "*the application of intelligence and tact to the conduct of official relations between the Governments of independent states.*"¹³ Boer Mauna defined diplomacy as several means or behaviors conducted in negotiations between states to improve international relations,¹⁴ while others

⁷ Fransesco Parisi, "Spontaneous Emergence of Law: Customary Law," *Encyclopedia of Law & Economics* 5 (2000): 604.

⁸ Boer Mauna, *Hukum Internasional: Pengertian, Peranan Dan Fungsi Dalam Era Dinamika Global* (Bandung: Alumni, 2003).

⁹ I.C.J. Reports, "Colombian-Peruvian Asylum Case, Judgment of November 20th 1950," 1950.

¹⁰ I.C.J. Reports, "Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment," 1986.

¹¹ Abdul Rashid Moten, "US Embassy in Jerusalem: Reasons, Implications and Consequences," *Intellectual Discourse* 26, no. 1 (2018): 9.

¹² Ian Brownlie, *Principles of Public International Law*, 4th ed. (Oxford: Oxford University Press, 1990).

¹³ Lord Gore-Booth, *Satow's Guide to Diplomatic Practice Fifth Edition* (New York: Longman Publishing Group, 1979).

¹⁴ Mauna, *Hukum Internasional: Pengertian, Peranan Dan Fungsi Dalam Era Dinamika Global*.

defined diplomacy simply as a mean of communication between parties including communications between recognized envoys. According to the definitions of diplomacy as stated above, it is safe to concluded that diplomatic law is a series of provisions or international law principles regulating diplomatic relations between states based on mutual agreements. International law instrument which oversee diplomatic relations between states is Vienna Convention on Diplomatic Relations 1961 (VCDR). In this treaty, the functions of diplomatic mission are laid out in Article 3, which is: a) to represent the sending State in the receiving State; b) to protect the interests of the sending State and its nationals in the receiving State; c) to negotiate with the Government of the receiving State; d) to ascertain conditions and developments in the receiving State; and e) to promote friendly relations between the sending State and the receiving State.

Concerning the establishment of a diplomatic mission, VCDR does not laid out specific provisions about how states must conduct a diplomatic mission. In general, the concept of ‘mutual consent’ from two states are needed for a diplomatic mission to be established, and the consent is formed through a bilateral treaty according to Article 2 of the treaty. The establishment of a mission and the opening of embassies mostly relied on customary international law, that is state practice.¹⁵ For example, the establishment of embassies in the receiving state are mostly located in the capital city.

The issues raised in this paper will mainly discuss about the legitimacy of Jerusalem Embassy Act according to international law and particularly the international diplomatic law. Moreover, we will also discuss about Resolution 181 as a source of international law and the validity of Israel’s claim over the sovereignty of Jerusalem based on the *corpus separatum* principles and international humanitarian law provisions. The state of the art of this article lies on the challenges to the legally binding power of Jerusalem Embassy Act *vis a vis* to international law. The discussion in the topic of Jerusalem Embassy Act as a political move from the United States are common from the perspective of international politics. However, it is difficult to find research on the topic under international law. This research will enrich publicity tally on Jerusalem embassy act in international law literature, in which at the end of the research we withhold that Jerusalem Embassy Act as illegitimate legislative according to international law, due to its violations of Vienna Convention on Diplomatic Relations 1961 and certain UN resolutions.

¹⁵ Eileen Denza, *Diplomatic Law: Commentary on the Vienna Convention on Diplomatic Relations*, 4th ed. (Oxford: Oxford University Press, 2016).

2. Methods

This article is the result of a juridical normative research, which analyze the gap between *lex lata* and *de Lege ferenda*. The research was conducted by desk study, based on the literary data or the secondary data that gives weight to the legal principles and comparative law. The secondary data is collected through literary study. In presenting the result, this research uses the descriptive and analytical writing.

3. Results and Discussion

Resolution 181 as a Formal Source of International Law and The Legitimacy of Jerusalem Embassy Act in Accordance with International Law

Palestine was once a territory under the Ottoman Empire¹⁶, where the city of Jerusalem was under the direct authority of the capital city of Istanbul due to its significance and important values in Abrahamic religions. Following the aftermath of World War I and the dissolve of Ottoman Empire, League of Nations bestowed Britain and France the mandates over Ottoman's former territory, known as Mandates. France was given mandates over Syria and Lebanon, while Britain gained mandates over the territory which will soon be called Israel, West Bank, Gaza Strip, and Transjordan.

Meanwhile in Europe, an organization called The Zionist Organization is a Jewish organization aimed to create an independent Jewish state (Der Judenstaat). The Zionist believed that the Jewish state, as promised in their holy scripture, located in Palestine. Due to the increasing anti-Semitism movement in Europe, the Zionist received sympathies for their movements from western countries. This pushed Britain to grant the Zionist's request for European Jews migration to Palestine through Balfour Declaration in 1917.¹⁷

The increasing Jewish population in Muslim-majority Palestine created widespread civil conflicts and chaos between the Jews migrants and Arab settlers. The Arabs believed that the Zionist movement and British Mandate were threatening the continuity of Arabs community in Palestine and limited their right of self-determination. Violence conflicts arose in many areas of Palestine, known as 1929 Palestine Riots. One notable event was during 1928 over the ownership of the Wailing Wall. Both Jews and Arabs Muslims concurred that Wailing Wall are holy sites according to their beliefs, and a series of claims of ownerships leading to a massive

¹⁶ N. J. Mandel, "Ottoman Policy and Restrictions on Jewish Settlement in Palestine: 1881–1908—Part I," *Middle Eastern Studies* 10, no. 3 (1974): 312–32.

¹⁷ Martin Kramer, "The Forgotten Truth About The Balfour Declaration," *Mosaic Magazine*, June 2017.

violence attacks that spread throughout the country. It led to massacres targeted toward Jewish people in the city of Hebron and Safed.¹⁸ Another was during the year of 1936-1939, where the Arab Palestinians revolted against British Mandate and Zionist Movement. As the aftermath of the revolt, Britain promised to settle the dispute by limiting the numbers of migrating Jews into Palestine, and to recommend the separation of Palestine into two states. The recommendations, however, were not accepted by both the Jews and Arabs and the numerous bloody conflicts continued spreading across the country.

Due to the widespread conflicts and disputes, Britain finally handed over the Mandate over Palestine to the UN in 1947 and to request a dispute settlement for the Arabs and Jews in the Palestinian territory. In response, General Assembly created UN Special Committee on Palestine (UNSCOP), which discuss about the ongoing conflicts in Palestine and to compose appropriate recommendations for the dispute settlements.¹⁹ The committee recommended the partition of Palestine into two states, based on the previous recommendations made by the British Mandate.

Based on this recommendation, the General Assembly adopted Resolution 181 (II) concerning *The Future Government of Palestine* on November 29, 1947. The resolution is a recommendation for the partition of Palestine into the territory of two states, the state for Arabs and the state for Jews, with Jerusalem as the separate entity under the international regime.

According to Article 10 and 11 of UN Charter, General Assembly resolution is a recommendation concerning any questions or matters within the scope of the Charter or relating to the powers and functions of any UN organs. As such, General Assembly resolution does not possess a binding characteristic, as the formal source of international law under Article 38(1) ICJ Statute.²⁰ Nowadays, the said article of the Statute of ICJ overarchingly regarded as a direction to the significant sources of international law, which the court have to consider in settling a dispute.²¹ However, there are several theories which stated that resolution can possess the binding characteristic, therefore transforming the General Assembly resolution into a formal source of international law. One of the relevant approaches to this theory is the instant customary law approach, where the

¹⁸ Yaron Z. Eliav, *God's Mountain: The Temple Mount in Time, Place, and Memory* (Baltimore: Johns Hopkins University Press, 2009).

¹⁹ Asher Susser, "The Historical Linkage: Israel's Legitimacy and the Idea of Partition," *Israel Studies* 23 no. 3 (2018): 220.

²⁰ Stephen M. Schwebel, "The Effect of Resolutions of the U.N. General Assembly on Customary International Law", *Proceedings of the Annual Meeting (American Society of International Law)* 73, (1979): 302.

²¹ A. Z. Borda, "A Formal Approach to Article 38(1)(D) of the ICJ Statute from the Perspective of the International Criminal Courts and Tribunals. *European Journal of International Law*" 24, no. 2 (2008): 649-61.

agreement of states forming the resolution is to be perceived as *opinio juris*.²² *Opinio juris* is one of the characteristics of international law, where a custom needed to be accepted as law by states. In *Nicaragua* case, the Court stated that in order for a new customary rule to be formed, states must believe that their practice possess the legal characteristic, therefore rendering it as an obligatory behavior.²³ In the advisory opinion of *The Use of Nuclear Weapon*, it is also stated that General Assembly resolutions may provide evidence for the emergence of an *opinio juris*.²⁴ The shifting conditions, including customary international law are, not only on the international system as a whole, but also, surprisingly perhaps, on national (domestic nation state) legal systems as well.

Although Resolution 181 itself gained 10 negative votes and 1 abstain vote, it is not enough to negate the normative value the resolution has obtained. It is the same view as the Court in *Use of Nuclear Weapon* advisory opinion, where negative votes do not obliterate the customary rules from a resolution, which have been confirmed by treaty law.²⁵ This is in accordance with another theory concerning the binding characteristic of a resolution, called the new source approach. According to this doctrine, the majority consensus of states affirming the resolution is enough to render the resolution as binding, even for the states who abstained from the voting process or those who cast negative votes toward the resolution.²⁶ To give a General Assembly resolution a binding characteristic according to the instant customary law approach, the existence of an *opinio juris* is necessary through the states' consensus which agreed to the resolution, or the legal principles contained in the resolution that is mirrored in the future, relevant resolutions. The *opinio juris* in Resolution 181 can be seen from the voting process of the resolution. The resolution gained 33 votes in favor from the Assembly from the total of 56 present States, and the Charter stated that decisions would be made if the resolution gained two-thirds majority of the present members.

Several General Assembly resolutions which discuss about the conflicts between Israel and Palestine was Resolution 194 in year 1948, where the Assembly discussed about the aftermath of Arab-Israeli War and the forming of *Conciliation Commission* as a mediation council between

²² F.A. Whisnu Situni, *Identifikasi Dan Reformulasi Sumber-Sumber Hukum Internasional* (Bandung: Mandar Maju, 1989).

²³ I.C.J. Reports, "Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment."

²⁴ I.C.J. Reports, "Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion," 1996.

²⁵ I.C.J. Reports.

²⁶ Marko Divac Öberg, "The Legal Effects of Resolutions of the UN Security Council and General Assembly in the Jurisprudence of the ICJ," *The European Journal of International Law* 15, no. 5 (2006).

Israel and the Arab states. Resolution 303 (IV) in year 1949 emphasize Jerusalem's status as *corpus separatum*²⁷, and Resolution 273 (III) in year 1949 concerning the admission of Israel as the State member of the UN and emphasized Israel's acceptance to carry out the obligations contained in the Charter.

Aside from General Assembly, there are also several Security Council resolutions concerning the same matter. Some of them are Resolution 252 in year 1968, which stated that every legislative and administrative actions taken by Israel which tend to change the legal status of Jerusalem are invalid and called upon Israel to rescind all such measures, referring back to the related General Assembly resolutions such as Resolution 181, 194, and 303. Another resolution is Resolution 298 in year 1971, where the Council further emphasized that Israel's actions in the occupied territory of Palestine is invalid, and that such actions are Israel's failure to respect the previous resolutions.

Analyzing those resolutions adopted by UN parliamentary organs, it is concluded that the principles contained in Resolution 181 has formed an *opinio juris*, mirrored by the following resolutions. It is safe to say that Resolution 181 can be considered as a formal source of international law, because Resolution 181 has fulfilled the necessary element as a customary international law. Therefore, it can be considered binding, in this case particularly for the state of Israel, Palestine, and United States. However, the doctrine of persistent objector may limit the binding power²⁸ of Resolution 181 as a customary international law. The doctrine limits the enforceability where, if a state persistently objects to the development of a customary international law, it cannot be held to that law.²⁹ One of the implementations from this doctrine is *Anglo-Norwegian Fisheries* case, where the Court decided that the limitations 'ten-mile rule' set forth by Britain isn't binding for Norway because Norway has consistently opposed any attempt to apply it to the Norwegian coast.³⁰ This doctrine may apply to Israel, despite Israel has stated clearly that they accepted the UN resolution as the territorial limitations of their sovereignty, but it is an apparent fact that that Israel has consistently rejected the principles contained in Resolution 181 by the occupation of Jerusalem and sovereignty claim over the occupied territory. This does not mean that Israel is not bound by Resolution 181.

²⁷ Elad Ben-Dror, "The United Nations Plan to Establish an Armed Jewish Force to Implement the Partition Plan (United Nations Resolution 181)," *Diplomacy & Statecraft* 24, no. 3 (2013): 559–78.

²⁸ Joel P. Trachtman, "Persistent Objectors, Cooperation, and the Utility of Customary International Law," *Duke Journal of Comparative and International Law* 21 (2010).

²⁹ Holning Lau, "Rethinking the Persistent Objector Doctrine in International Human Rights Law," *Chicago Journal of International Law* 6, no. 1 (2005): 495.

³⁰ I.C.J. Reports, "Fisheries Case, Judgment of December 18th, 1951," 1951.

As a member state of the UN, Israel is obligated to carry out the obligations contained in the Charter, and one of them is to follow the general provisions contained in their resolutions. As an international treaty, the Charter is binding to the member states and the obligations within must be carry out in good faith. In addition, as have been previously discussed, the provisions contained in Resolution 181 are often utilized and referred back in future, relevant resolutions concerning the question of Israel and Palestine, including Security Council resolutions. According to Article 25 of UN Charter, Security Council resolutions are binding toward member states, and thus Israel is bound to the provisions contained in the resolutions.

Resolution 181 stated that Jerusalem was to be given an international regime called *corpus separatum*, a separate entity under the administrative power of UN.³¹ The city of Jerusalem has long been a center of conflict in the Middle East with everchanging claims of sovereignty; first by Transjordan in 1949 which occupied East Jerusalem and the West Bank, then the occupation of Israel as the aftermath of Six Days War where Israel then claimed Jerusalem as their capital city.³² This claim is emphasized by the legitimation of Jerusalem Embassy Act by the United States. Palestine, soon after their declaration of independence in 1988, also claimed East Jerusalem as their rightful capital city.³³

According to the principles contained in General Assembly Resolution 181, 194, and 303, no States would open their diplomatic mission in Jerusalem. It is because a move to Jerusalem would imply acceptance of Israel's establishment there of its seat of government,³⁴ Diplomatic missions for Israel are established in Tel Aviv, while the missions for Palestine are held in the city of Ramallah, in the Palestine's part of West Bank.³⁵ This is emphasized in the provisions contained in UN Security Council Resolution 478 in year 1980, where the Council instructed every established diplomatic missions at Jerusalem to withdraw their missions in the Holy City.

US Congress first adopted Jerusalem Embassy Act in 1995, affirming Jerusalem as the capital city of Israel and to establish a diplomatic mission for Israel in the city.³⁶ This act allowed the right of presidential waiver, where the president in office may delay the diplomatic

³¹ Adnan Abdelrazek, "A UN Perspective on the Status of Jerusalem," *Palestine-Israel Journal on Politics, Economics, and Culture* 17, no. 1 (2011): 160.

³² Walid Khalidi, "The Ownership of the U.S. Embassy Site in Jerusalem," *Journal of Palestine Studies* 29, no. 4 (2000): 81.

³³ Ruth Lapidot, "Jerusalem: Some Legal Issues," *The Jerusalem Institute for Israel Studies Series* no. 415 (2011): 26.

³⁴ Victor Kattan, "Why U.S. Recognition of Jerusalem Could Be Contrary to International Law", *Journal of Palestine Studies* XLVII, no. 3 (2018): 80.

³⁵ "Explainer: Is Jerusalem the Capital of Israel or Not?," *Political Geography Now*, 2017.

³⁶ Geoffrey R. Watson, "The Jerusalem Embassy Act of 1995," *Catholic University Law Review* 45, no. 3 (1996): 837.

establishment in six-months interval if he considered it as a way to maintain national security. The current president in office, Donald Trump, finally approved the Act on December 6, 2017. The approval oversees that the US Embassy for Israel will be opened in May 2019, and during the preparation every US diplomatic mission will be held in US consular office located in West Jerusalem.³⁷

Jerusalem, as stated in Resolution 181, is a *corpus separatum* and is not a city under any state's sovereignty. To see whether the legitimation of Jerusalem Embassy Act has violated international law, in this case particularly the provisions in VCDR, we will first discuss about Jerusalem's validity as Israel's sovereignty. Sovereignty itself is a basic concept in international law, where it is often defined as an absolute power over a certain territory which will be the foundation of a nation.³⁸ Territorial sovereignty meant that the reigning power can exercise their powers and political functions over their territory.

Ever since the Arab-Israeli War in 1948, Jerusalem was occupied by various hostile armies. It was first divided and occupied by both Transjordan in the west, and Israel in the east. This division, also known as the Green Line borders, was the result of an armistice agreement between Israel and neighboring Arab states as the aftermath of 1948 war. However, the *de facto* borders changed again in 1967 during the Six Days War. In a series of attacks, Israel took over West Jerusalem and replaced Transjordan as the occupying power in Jerusalem.³⁹ Moreover, the territories that Israel occupied were considered as Palestine's sovereignty according to 1933 Oslo Accords, often referred to as Occupied Palestine Territories (OPT). During Israel's occupation, Israel had taken many legislative and administrative measures and actions in the city. Israel has created residential for Israeli citizens in the occupied territory of East Jerusalem and moving their citizens inside the city, changing the demographic of the city. Israel has moved its central government to Jerusalem, where the head of state and the head of diplomatic missions will take their oaths in the city of Jerusalem. Furthermore, Israel has claimed "a unified Jerusalem" as their capital city, as stated in their constitution, *Basic Law*, in 1980.

Occupation in international law, according to Article 42 of Hague Convention, is defined as where a territory is placed under the authority of a hostile army. The law applied in the occupied territory is not the hostile army's legal system, but the international humanitarian law

³⁷ U.S. Department of State, "Opening of U.S. Embassy Jerusalem," U.S. Department of State, 2018.

³⁸ Jenik Radon, "Sovereignty: A Political Emotion, Not A Concept," *Stanford Journal of International Law* 40 no. 195 (2004): 1995.

³⁹ Kristina Daugirdas and Julian Davis Mortenson (eds.), "President Trump Recognizes Jerusalem As the Capital of Israel", *American Journal of International Law* 112, no. 2 (2018): 2.

provisions contained in Geneva Convention I – IV. One of the most important aspects of an occupied territory is that the occupying power does not acquire sovereignty over the territory, according to the provisions in Hague Convention. Additionally, according to the provisions contained in Geneva Convention, the occupying power must not change nor alter the status and overall demographic of the occupied territory by moving their citizens into the occupied territory.

Vienna Convention on Diplomatic Relations 1961 does not provide a detailed provision concerning the establishment of a diplomatic mission. In general, the establishment of a diplomatic mission is based on the agreement between states or according to the state practice, which will evolve into a customary international law. One of the principles concerning the establishment of a diplomatic mission is ‘*in the receiving state’s territory*’, as contained in Article 21. However, there is no specific clause about an establishment in receiving state’s capital city. It is a common state practice, where most states established their diplomatic mission in the receiving state’s capital city, under the consideration that diplomatic mission relied heavily on governmental functions of the receiving state, and the capital city is where the central governments are located.

The validity of Jerusalem as the capital city of Israel and, consequently, the legality of Jerusalem Embassy Act according to the international law can be viewed from two points. First, Jerusalem is a city under no sovereignty, as stated in Resolution 181 and the following relevant UN resolutions. Since we have established that Resolution 181 may be considered as a formal source of international law, then the provision of *corpus separatum* is a legal norm and binding to all states. According to the provision, Israel’s claim of the city of Jerusalem as their capital city is invalid. Second, under the provisions of international humanitarian law, occupied territory is not under the occupying power’s sovereignty. Jerusalem had been an occupied territory ever since Israel took it from Jordan in Six Days War, but Israel may not claim Jerusalem as their territorial sovereignty. The laws in force in Jerusalem are the relevant international humanitarian law instead of Israel’s, according to Article 8 of Hague Convention.⁴⁰ Therefore, it is safe to assert that Jerusalem is not the sovereignty of Israel.

The legitimation of Jerusalem Embassy Act has violated the principles contained in international law, such as the relevant UN resolutions. As a *corpus separatum*, Jerusalem is not under any state’s sovereignty and therefore rendering any claims to it as invalid. US claim over Jerusalem as Israel’s capital city in their Act is not proportionate to Resolution 181 in which US

⁴⁰ John Dugard, John; Reynolds, “Apartheid, International Law, and the Occupied Palestinian Territory,” *European Journal of International Law* 24, no. 3 (2013): 867–913.

is bound onto. Moreover, if we are looking through the perspective of Jerusalem as an occupied territory, this does not give Israel's right to the claims. Hague Convention has explicitly stated that an occupied territory may not be claimed under the occupying power's sovereignty. Therefore, Israel's claim over Jerusalem is rendered invalid according to international humanitarian law. Meanwhile if we once again overview the provisions in VCDR, while not necessarily in the capital city, the establishment of a diplomatic mission must be in the receiving state's territory. We have asserted that Jerusalem is not the rightful territory of Israel and that their claim of sovereignty is rendered invalid, therefore the establishment of a diplomatic mission for Israel located in Jerusalem is rendered illegal according to the international diplomatic law's provisions.

4. Conclusions

General Assembly Resolution 181 is a formal source of international law because the provisions contained in the resolution has fulfilled the requirements as a customary international law, that is the forming of *opinio juris*. As a formal source of international law, it possessed a binding characteristic and therefore bound the states such as Israel, Palestine, and United States. Even though the doctrine of persistent objector may apply to Israel due to the consistently opposing attempts at following said provisions, Israel is still bound to the resolution as a member state of the UN.

Jerusalem Embassy Act is invalid according to international law because it has violated the provisions contained particularly in Vienna Convention on Diplomatic Relations 1961 and relevant UN resolutions. Jerusalem is not a territorial sovereignty of Israel because Jerusalem is a *corpus separatum* according to Resolution 181, therefore rendering any claims of sovereignty over the city as invalid. Furthermore, as an occupying power, Israel may not claim Jerusalem as their sovereignty because it has violated the provisions of international humanitarian law, particularly Hague Convention 1917 and Geneva Convention I – IV. Since VCDR stated that an establishment of a diplomatic mission must be in the receiving state's territory, this rendered the Jerusalem Embassy Act as illegal. It is best to note that, since the question of Palestine and Israel is still left unsolved and the dispute settlement is still an ongoing process, that Jerusalem Embassy Act needed to be pulled back by the US parliament in order to maintain international peace and security.

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